

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13

FLYING FOOD CATERING, INC.<sup>1</sup>

Employer

And

TRUCK DRIVERS, OIL DRIVERS, FILLING STATION AND PLATFORM WORKERS UNION LOCAL 705,  
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

Case 13-RC-20946

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>2</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>4</sup>

All full-time and regular part-time truck drivers, drivers' helpers and transportation coordinators employed by the Employer at its facility currently located at 4330 Transworld Rd., Schiller Park, Illinois; but excluding all warehouse employees, storeroom employees, maintenance employees, dispatchers, cooks and cooks' helpers, porters, dish room employees, station attendants, equipment/liquor set-up employees, food and equipment runners, office clerical employees, managers, hourly and salaried supervisors, and all other employees as defined in the Act.

**DIRECTION OF ELECTION\***

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status, as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if

they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union Local 705, Affiliated with the International Brotherhood of Teamsters, AFL-CIO.

#### LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before April 8, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by April 15, 2003.

**DATED** April 1, 2003 at Chicago, Illinois.

/s/Elizabeth Kinney  
Regional Director, Region 13

\*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing<sup>i</sup>.
- 2/ The arguments advanced by the parties at the hearing and in their briefs have been carefully considered.
- 3/ Flying Food Catering, Inc. (herein the “Employer” or “Flying Foods”) is a corporation engaged in providing delivery and catering services to airlines at O'Hare Airport.
- 4/ Teamsters Local 705 (herein the “Petitioner”) seeks to represent a unit of all full-time and regular part-time truck drivers and drivers’ helpers employed by the Employer at its facility currently located at 4330 Transworld Rd., Schiller Park, Illinois (herein the “O’Hare facility” <sup>ii</sup>); but excluding all warehouse employees, storeroom employees, maintenance employees, transportation coordinators, dispatchers, cooks and cooks’ helpers, porters, dish room employees, station attendants, equipment/liquor set-up employees, food and equipment runners, office clerical employees, managers, hourly and salaried supervisors, and all other employees as defined in the Act. The petitioned-for unit would have approximately 28 employees. Conversely, the Employer contends that only a wall-to-wall unit would constitute an appropriate unit. This larger unit would have approximately 233 employees. The Employer relies on several prior Decisions and Direction of Election, (13-RC-17202; 13-RC-18060; 13-RC-18977; 13-RC-19009; and 13-RC-19832) wherein the Regional Director found wall-to-wall units to be the only appropriate unit at Midway airport. The Petitioner relies on the more recent Decision and Direction of Election in 13-RC-19900 and 13-RC-19902, in which the Regional Director found a smaller unit comprised of drivers, drivers’ helpers and dispatchers to be an appropriate unit for collective-bargaining at the Midway facility.

Based upon the record evidence and the applicable case law to be discussed below, I find that the drivers and drivers’ helpers have a sufficient community of interest apart from the Employer’s remaining employees at the O’Hare facility to constitute an appropriate separate unit, with the exception of the transportation coordinators. With regard to the transportation coordinators, I find that they must be included in the petitioned-for unit of drivers and drivers’ helpers based upon my community of interest analysis.

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<sup>i</sup> Although the legal name of the employing entity was raised as a disputed issue at hearing, both parties submitted business records (i.e. Certificate of Incorporation), which demonstrate that the legal name of the Employer is Flying Food Catering, Inc. Neither party disputes this fact on brief. Therefore, although the Employer may be known in the industry as Flying Food Group or Flying Food Services, I am satisfied from the documentary evidence that the proper and legal name of the employing entity in this case is Flying Food Catering, Inc.

<sup>ii</sup> The record evidence shows that the Flying Food facility is physically located about 10 minutes away from the O’Hare airport. However, I will refer to the Employer’s facility as the O’Hare facility herein for ease of reference.

## **Facts**

Flying Foods operates an airline catering business for 29 international airlines at O'Hare International Airport (herein "O'Hare"). Specifically, Flying Food provides meals, beverages, food service equipment and airline cleaning supplies to international aircraft at O'Hare. The Employer contracts with individual airlines to cater and/or "strip"<sup>iii</sup> international flights arriving at and departing from O'Hare. Approximately 233 hourly employees are employed at Flying Foods' O'Hare facility, of which 25 are drivers, 3 are drivers' helpers and 14 are transportation coordinators.

Anthony Moore is the General Manager of the O'Hare facility. Moore runs the facility Mondays through Fridays, and reports directly to Milton Liu, the Chief Operating Officer of Flying Food Fare, Inc. (the Employer's parent company). On Saturdays and Sundays, the O'Hare facility is run by Transportation Operations Manager Mark Carlson and Food Services Operations Manager Rommel Magsino, respectively. Carlson and Magsino report directly to Moore. In addition, there are also 7 shift managers and 4 hourly supervisors<sup>iv</sup> who directly assign and oversee the work of the Employer's hourly employees. All shift managers' report to Transportation Operations Manager Mark Carlson.

The O'Hare facility consists of a single building which houses docks, a warehouse area, a storeroom area, food and equipment production areas, and administrative office areas. More specifically, the hourly non-administrative employees receive, process and transport goods/materials at the O'Hare facility in the following manner:

### Warehouse and Receiving

Flying Foods purchases and/or receives two types of products at its O'Hare facility: prepared foods and airline-owned supplies and equipment. The storeroom employees receive and work with the prepared foods; the warehouse employees receive and work with the airline-owned supplies and equipment. All of the Employer's receivable food and equipment is delivered to the receiving docks in the warehouse.

#### (i) Storeroom Employees

Flying Foods employs approximately 13 storeroom employees. These employees receive and place all incoming food products in the bulk freezers, produce box, dairy box, refrigerator, yogurt/juice box, soda/liquor room and dry storage area. All products handled by the storeroom employees have been purchased by and are owned by Flying

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<sup>iii</sup> Stripping a flight includes removing all used equipment, supplies, and trash from the plane and transporting them back to the Employer's O'Hare facility.

<sup>iv</sup> The parties stipulated at hearing that the 4 hourly supervisors would be specifically excluded from the unit found to be appropriate in this matter.

Foods. Storeroom employees report to the Employer's Purchasing Manager, Charles Edwards.

(ii) Warehouse Employees

Flying Foods employs approximately 8 warehouse employees. These employees receive and place all equipment and supplies owned by individual airlines with which Flying Foods has a contract to warehouse their goods. All products handled by the warehouse employees have been purchased by and are owned by individual international airlines; for example, the warehouse has a JAL Liquor Room. The liquor received and handled by the Employer's warehouse employees is owned by Japan Airlines. Warehouse employees report to the Employer's Warehouse/Equipment Manager, Crzyszto Aniszewski.

Food Production and Equipment Set-Up

Within the O'Hare facility, Flying Foods processes hot and cold foods for service on international flights. Food products are moved from the various areas of the storeroom into either the hot kitchen area or the cold food area, where they are prepared for the airline flights. Flying Foods also assembles equipment, such as trays, linens, china and utensils for placement on aircraft. The hot food employees, cold food employees, and food runners report to Food Services Operations Manager Rommel Magsino. The kit packers and equipment runners report to Transportation Operations Manager Mark Carlson.

(i) Hot Food Employees

Flying Foods employs approximately 35 hot food employees, which includes cooks, cooks' helpers and station attendants. The cooks and cooks' helpers cook the raw food products, which they receive from the various areas of the storeroom. The station attendants assemble and plate the meals.

(ii) Cold Food Employees

Flying Foods employs approximately 77 cold food employees, all of whom are station attendants. The cold food employees assemble all of the food products (including the hot meals, salads, and desserts) on the trays, which will ultimately be served to airline passengers. The cold food employees also place their trays on the carts, which are used by the flight attendants to push up and down the aisles of the aircraft in the servicing of passengers. Once cold food employees have completed the compilation of their carts, they deliver them to the Final Hold Box, which is located next to the inbound/outbound dock area.

(iii) Food Runners

Flying Foods employs approximately 3 food runners, who physically retrieve the food products from the various areas of the storeroom and deliver them to the hot and cold food areas.

(iv) Equipment/Liquor Set-Up Employees

Flying Foods employs approximately 17 equipment/liquor set-up employees (also known as “kit packers”). These employees work in two areas of the O’Hare facility. Some of the kit packers work in the soda/liquor room adjacent to the warehouse, where, pursuant to instructions from each airline, they fill the flight carts with liquor and soda. The remaining kit packers work in the flight set-up area adjacent to the food production area, where they fill the flight carts with supplies such as china, cups, linens and utensils. Once kit packers have completed the compilation of their carts, they deliver them to the Final Hold Box.

(v) Equipment Runners

Flying Foods employs approximately 4 equipment runners, who physically transport equipment (china, cups, linens, utensils, trays, and carts) to the hot and cold food areas, as well as to the flight set-up area.<sup>v</sup>

Transportation/Sanitation

Once the food products, supplies and equipment are produced and assembled on carts, the Employer’s transportation employees physically move the carts to and from the O’Hare facility and the aircraft. Sanitation employees then dispose of trash and used supplies that are returned to the docks by the transportation employees. All classes of transportation employees and sanitation employees report to Transportation Operations Manager Mark Carlson.

(i) Drivers

Flying Foods employs approximately 25 truck drivers (who are also known as food equipment handlers, or FEH’s). All drivers, as a requirement for the position, possess commercial drivers’ licenses. The drivers are responsible for the actual catering of the aircraft. For outbound flights, drivers retrieve the completed airline carts from the Final Hold Box and take them out to the inbound/outbound dock area. The drivers then load their trucks with the airline carts and drive approximately 10 minutes to the aircraft

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<sup>v</sup> The equipment set-up employees (kit packers and equipment runners) report to Transportation Operations Manager Mark Carlson.

at O'Hare. Once on the airfield, the drivers back their trucks up to the aircraft and use a scissor mechanism on the truck to transport the airline carts up to the aircraft. The drivers then enter the aircraft and secure the carts into the galleys. For inbound flights, drivers collect used supplies and trash from the aircraft and transport them back to the O'Hare facility on the box trucks (as noted above, this process of cleaning an inbound flight is called "stripping" the flight). Once drivers return to the O'Hare facility from catering a flight, they unload their trash at the inbound/outbound dock area, refill their trucks with new airline carts for the next flight, and return to O'Hare. Drivers also prepare ice and dry ice needed for all flights at the inbound/outbound dock area.

(ii) Drivers' Helpers

Flying Foods employs approximately 3 truck drivers' helpers. Helpers perform the same tasks as the drivers and work alongside the drivers. However, the helpers do not operate the box trucks, as they do not possess commercial drivers' licenses.

(iii) Transportation Coordinators

Flying Foods employs approximately 14 transportation coordinators. The coordinators ensure that the airline carts are complete before they are transported to the aircraft. The coordinators check the airline carts in the Final Hold Box to see that they are properly matched with supplies for each particular flight. Coordinators also confirm counts<sup>vi</sup> for each flight by checking with the employees in each department of the O'Hare facility. Once the coordinators confirm that the counts for a flight or flights are correct, they tell the drivers that the carts are ready for transport to the aircraft. Coordinators then travel with the drivers and drivers' helpers (or drive themselves) to the aircraft to oversee and/or assist the actual catering of the flights.

(iv) Sanitation Employees

a. Dish Room Employees

Flying Foods employs approximately 22 dish room employees, who receive and clean dirty equipment (silverware, cups, dishes) in the dishroom adjacent to the food production areas.

b. Porters

Flying Foods employs approximately 13 porters, who clean all areas of the O'Hare facility and empty the truck drivers' trash from aircraft at the inbound/outbound dock area.

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<sup>vi</sup> A "count" is the number of meals and beverages specified by an airline for a particular flight.

### Other Hourly Employees

#### Dispatchers

Flying Foods employs approximately 3 dispatchers. The dispatchers' main function is to receive information from the airlines regarding flight times and updates to the food/beverage/supplies requested for each flight. Dispatchers then communicate the flight information to all hourly employees. Dispatchers communicate the estimated time of arrivals of flights to the drivers and drivers' helpers; they communicate any change in number of meals/beverages to the coordinators and the food/beverage employees. All hourly employees who report off work due to illness call in to the dispatchers. The record does not specify who supervises the dispatchers.

### Integration Among Hourly Employees

The drivers, drivers' helpers and coordinators functions and skill requirements are different from those of the Employer's remaining hourly employees. Flying Foods requires only drivers to possess commercial drivers' licenses in order to perform their duties. Only drivers and coordinators<sup>vii</sup> operate the trucks to and from the Employer's facility. Since they are the only groups of employees who travel to and from the O'Hare airfield, the drivers, drivers' helpers and coordinators must receive and maintain a field security clearance in accordance with Federal Aviation Association regulations. Since none of the remaining hourly employees travel to or from the airport, none of the remaining hourly employees have field security clearance. Drivers, drivers' helpers and coordinators physically board aircraft and, as such, they are required to submit to a 10-year background check as a condition of their employment by Flying Foods. None of the remaining hourly employees are required to submit to this background check. None of the remaining hourly employees fill in for the driver, driver helper or coordinator positions. General Manager Moore testified that only the drivers' helpers and coordinators fill in for drivers.<sup>viii</sup>

The evidence shows that most of the permanent transfers among the Flying Foods hourly employees are from the driver position to coordinator position. Moore and Human Resources Manager Diana Alejandro testified that 11 of the 14 current coordinators received permanent transfers from driver positions.

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<sup>vii</sup> Record evidence establishes that 1 warehouse employee who happens to possess a commercial drivers license has driven a truck for the Employer in emergency situations and occasionally on an overtime basis.

<sup>viii</sup> The record did not indicate whether drivers, drivers' helpers or coordinators fill in for any of the remaining hourly positions.



Moore testified that while Flying Foods hired 7 drivers in 2002, all 7 of these drivers were hired off the street (as opposed to transferring from within the O'Hare facility). The record also shows since 1995, only 4 of Flying Foods' current drivers have transferred from other positions within the O'Hare facility (2 of whom were transferred from drivers' helper positions).

Liu testified that drivers, drivers' helpers, coordinators and dispatchers communicate with the aircraft. However, Liu testified further that the dispatchers communicate with the aircraft through the drivers, drivers' helpers and coordinators. In this regard, Flying Foods maintains a Transportation Communications Committee, headed by Carlson, and solely comprised of drivers, drivers' helpers and coordinators. Flying Foods does not maintain any other committees, which are limited to distinct groups of employees. Moreover, the mandatory video safety training for Flying Foods' drivers is not offered to any of the remaining hourly employees.

Among the classifications of employees who ultimately report to Carlson, the drivers, drivers' helpers and coordinators report directly to their shift managers, while the equipment runners, kit packers, porters and dishroom employees report directly to two hourly supervisors, Rodante Cabotaje and Chico Bernard. The food production employees and warehouse/storeroom report directly to two hourly supervisors, Lai Peng Feng and Romeo Esparza, respectively. Different classifications of hourly employees work on different, but overlapping, shifts. The drivers and drivers' helpers work many different 8-hour shifts, starting from 6:30 a.m. to midnight. Moore testified that a "good portion" of the drivers and drivers' helper starts at 11:00 a.m. or noon and that a "good portion" of the coordinators starts work between 9:00 a.m. and 10:00 a.m. Moore also testified that the food production employees generally work one of two shifts (the first starts between 3:00 a.m. and 6:00 a.m.; the other starts at 2:00 p.m.) and that dish room employees work on one of three set shifts (start times are 6:00 a.m., 1:00 p.m. and 9:00 p.m.). Storeroom/warehouse employees, kit packers and porters work early shifts, starting between 5:00 a.m. and 7:00 a.m. Moore testified that the O'Hare facility operates 24 hours per day, 365 days per year.

All of the hourly O'Hare facility employees share many of the same working conditions and benefits, i.e., the same employee cafeteria, locker rooms, parking lot, and employee entrance. Furthermore, all of these employees are paid bi-weekly on the same payday, enjoy the same breaks, use the same timeclocks, and receive the same company handbook. With the exception of the food production employees<sup>ix</sup>, the hourly employees wear the same company uniform. Wage increases are automatic for all classes of O'Hare facility employees. However, the entry hourly wage for drivers is \$11.75 and \$12.35 for coordinators while the entry hourly wage for the remaining hourly employees ranges from \$6.50 to \$9.75.

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<sup>ix</sup> Due to Food and Drug Administration regulations, the Employer's food production employees must wear special hair and hand protection.

Drivers and drivers' helpers have limited functional integration and only perfunctory contact with the remaining hourly employees at the O'Hare facility. Moore testified that the drivers and drivers' helpers spend 70% of their time outside the O'Hare facility, driving to and from O'Hare, and 30% of their time at the dock area unloading and loading their trucks. The remaining hourly employees spend their entire day at the O'Hare facility. Driver Nick Henkel testified that his contact with other O'Hare facility employees, besides drivers' helpers and coordinators, is "just to see them." Similarly, driver Page Atwater testified that his contact with hourly employees other than drivers' helpers or coordinators is "just to get my stuff." Atwater testified that he does go into the kitchen and the liquor/beverages areas to get extra meals and drinks for the airline carts to be loaded onto his truck, but that his interaction with the hourly employees in these areas is just to see them while he collects whatever additional food/beverages he needs for a particular flight. Driver Henkel corroborated Atwater's testimony by stating that drivers typically go into the facility to gather food, equipment, supplies or beverages only when the other employees have failed to prepare the airline carts in accordance with the specifications for a flight. In those cases, Henkel testified that he does not ask the other hourly employees in these areas to stock the missing items on the cart; rather, he will go into the food or warehouse or soda/liquor area and "grab" the items he needs for the cart.

In limited instances, drivers may have more extensive contact with the remaining hourly employees at the O'Hare facility. Atwater testified that for his Mexicana flight on Fridays, he often puts together the carts himself because the warehouse employees are running behind. Similarly, Henkel testified that he will sometimes put together a cart for a Mexicana flight. Moore testified that drivers and drivers' helpers "go into" the warehouse/storage areas as often as six times per day to retrieve cases of soda or liquor for the Mexicana flights as a "favor" to management. Liu testified that drivers and drivers' helpers "sometimes" go from the dock area into the warehouse/storage areas of the O'Hare facility to retrieve the airline carts from the kit packers, but that drivers and drivers' helpers otherwise only go into the warehouse/storage areas in an emergency. In addition, drivers and drivers' helpers have limited interaction with the porters, who Moore testified offload about 30-40% of the trash and supplies from trucks and who clean the trucks about 25% of the time. Moore also testified that drivers and drivers' helpers clean their own trucks about 75% of the time.

However, the drivers and drivers' helpers have extensive functional integration and substantive contact with the coordinators. Moore testified that coordinators spend at least 50% of their time with the drivers and drivers' helpers either at the dock area or driving to/from O'Hare to cater flights. To cater a flight, two and often time's three trucks are required. Coordinators are often paired up with the drivers to cater flights.<sup>x</sup> Moore, Liu, Henkel and Atwater all testified that coordinators regularly perform most of the functions that the drivers and drivers' helpers perform: loading trucks; driving to and from the aircraft; loading the aircraft; and unloading the aircraft. Although Atwater and Henkel testified that, at the aircraft, coordinators mainly oversee the work, while the drivers and

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<sup>x</sup> Eleven of the 14 current coordinators were previously Flying Foods drivers. As such, they have commercial drivers licenses and regularly drive trucks to and from O'Hare.

drivers' helpers physically cater the flight, both of these witnesses acknowledged that coordinators actually cater Japan Airlines flights with them three times and one time per week, respectively. The record evidence shows that on these Japan Airlines flights, coordinators are regularly assigned to drive trucks to O'Hare and to load and unload the flights. Moreover, Henkel testified that each Tuesday, a coordinator works with him at O'Hare to strip a Singapore Airlines flight.

### **Board Principles and Analysis**

The sole issue for consideration herein is whether the petitioned-for units of drivers and drivers' helpers share a community of interest such that they constitute an appropriate separate and distinct unit or whether they must be placed in the comprehensive wall-to-wall unit of all hourly O'Hare facility employees. Based upon the entire record herein, and the Board principles discussed below, I find that the drivers and drivers' helpers, along with the transportation coordinators, possess a community of interest such that they constitute an appropriate separate and distinct unit.

#### Appropriate Unit

Section 9(b) of the National Labor Relations Act directs the Board to "decide in each case whether, in order to assure employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof . . . ." "[T]he selection of an appropriate bargaining unit lies largely within the discretion of the Board whose decision, 'if not final, is rarely to be disturbed.'" *South Prairie Construction v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976)(citation omitted). There is nothing in the Act that requires the unit for bargaining be the only appropriate unit or the most appropriate unit – the Act only requires that the unit for bargaining be "appropriate" so as to assure employees the fullest freedom in exercising the rights guaranteed by the Act. *Overnite Transportation Co.* 322 NLRB 723 (1996); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenix Resort Corp.*, 308 NLRB 826 (1992). Thus, a labor organization is not required to seek representation in the most comprehensive group of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963).

#### Community of Interest

In defining the appropriate bargaining unit to ensure employees the fullest freedom in exercising the rights guaranteed by the Act, the key question is whether the employees share a sufficient community of interest. *Alois Box Co., Inc.*, 326 NLRB 1177 (1998); *Washington Palm, Inc.*, 314 NLRB 1122, 1127 (1994). In determining whether employees share a sufficient community of interest to constitute an appropriate unit, the Board weighs various factors, including the similarity of skills, functions, and working conditions throughout the proposed unit; the central control of labor relations; transfer of employees among the Employer's other construction sites; and the extent of the parties'

bargaining history. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988), citing *Metropolitan Life Insurance Co.*, 380 U.S. 438 (1965). Also, the Board will consider a difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of similar or dissimilar qualifications, training and skills; differences in job functions; amount of working time spent away from the facility; and integration of work functions. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962); *Banknote Corp. of America v. NLRB*, 84 F.3d 637, 647-648 (2d Cir. 1996).

#### Community of Interest Factors involving Drivers' Units

Furthermore, the Board has specifically defined the community of interest factors for making determination involving driver units:

- a. Whether the drivers have related or diverse duties, the mode of compensation, hours, supervision, and other conditions of employment, and
- b. Whether they are engaged in the same or related production processes or operations or spend a substantial portion of their time in such production or adjunct activities.

*E.H. Koester Bakery Co.*, 136 NLRB 1006 (1962).

In analyzing proposed driver units, the Board has recognized that in many instances drivers "have what amounts to a dual community of interest with some factors supporting their exclusion from an overall production and maintenance unit and some factors supporting their inclusion in the broader unit." In such situations, the Board states that the sole issue to be determined is whether or not the unit requested by the petitioner is an appropriate unit. *Pacemaker Mobile Homes*, 194 NLRB 742, 743 (1971).

#### Flying Foods Drivers, Drivers' Helpers and Coordinators Possess an Exclusive Community of Interest and Constitute an Appropriate Separate and Distinct Unit

The record evidence shows that, on balance, the drivers, drivers' helpers and coordinators have a community of interest, which is distinct from that of the remaining hourly employees. The record evidence described above shows that, although all hourly employees at the O'Hare facility share some common terms of employment (same benefits, lunchroom, lockerroom), the drivers, drivers' helpers and coordinators possess different skills and perform different job functions than the remaining hourly employees; their entry-level wage scale is higher than that of the remaining hourly employees; they work under different immediate supervision than the remaining hourly employees; and, unlike the remaining hourly employees, they are away from the facility for most of the work day. Based on the record evidence, and pursuant to the *E.H. Koester* factors, I find that the drivers, drivers' helpers and coordinators alone constitute an appropriate unit.

The Board cases and the previous Decisions and Direction of Election cited by Flying Foods in which a wall-to-wall unit was found to be the only appropriate unit are factually distinguishable from the case at bar. The Employer heavily relies on *Abdow*

*Corporation*, 271 NLRB 1269 (1984), wherein the Board found appropriate a wall-to-wall unit of production employees and drivers because, *inter alia*, all of the employees worked toward the single goal of preparation and delivery of the employer's food products. However, in reaching its decision to proceed to election in a wall-to-wall unit, the Board in *Abdow* relied "especially" on the very small size of the unit (24 employees, of which only 3 were drivers) in reaching its conclusion that the entire operation was highly integrated. *Id* at 1270. In the case at bar, a wall-to-wall unit would comprise 233 employees as compared to 42 employees in a unit of drivers, drivers' helpers and coordinators. The Employer's reliance on *Calco Plating, Inc.*, 242 NLRB 1364 (1979) and *Hicks Oil & Hicksgas*, 293 NLRB 84 (1989), is also misplaced. Unlike the drivers in *Calco*, who spent a significant portion of their time working closely with the production employees and performing actual production work, the drivers, drivers' helpers and coordinators in the instant case have only perfunctory contact with the remaining hourly employees at the O'Hare facility. Moreover, unlike the driver in *Hicks Oil*, who was regularly assigned production duties by the supervisor of the production employees, the drivers, drivers' helpers and coordinators in the instant case have no assigned production duties and report to different managers.

Similarly, in prior Region 13 Decisions and Direction of Election (Cases 13-RC-17202 and 13-RC-18060<sup>xi</sup>), the drivers and the production employees were placed in a wall-to-wall unit because the evidence showed that the driving function was integrated into the food service position. In this case, the drivers are not involved at all with food production. Therefore, the Decisions and Direction of Election cited by Flying Foods are inapposite.

Accordingly, I find the following unit appropriate for the purpose of collective bargaining and I direct an election in this unit:

All full-time and regular part-time truck drivers, drivers' helpers and transportation coordinators employed by the Employer at its facility currently located at 4330 Transworld Rd., Schiller Park, Illinois; but excluding all warehouse employees, storeroom employees, maintenance employees, dispatchers, cooks and cooks' helpers, porters, dish room employees, station attendants, equipment/liquor set-up employees, food and equipment runners, office clerical employees, managers, hourly and salaried supervisors, and all other employees as defined in the Act.

There are approximately 42 eligible voters in the unit found appropriate herein.

420-2900; 420-3400; 420-4000; 420-4600; 420-5000  
440-1760

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<sup>xi</sup> As the Employer notes in its brief, the petitions in Cases 13-RC-19009 and 13-RC-19832 were withdrawn prior to hearing. Therefore, these cases need not be considered herein.

